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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,595	01/30/2001	Peter Hossel	51186	8957
26474	7590 10/15/2004		EXAMINER	
KEIL & WEINKAUF 1350 CONNECTICUT AVENUE, N.W.			LAMM, MARINA	
	ON, DC 20036	ART UNIT	PAPER NUMBER	
			1616	

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) A) Interview Summary (PTO-413) Paper No(s)/Mail Date			Application No.	Applicant(s)			
## Annual Form ## 1616 ## The MAILING DATE of this communication appears on the cover sheet with the correspondence address on the cover sheet with the correspondence address of Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estensive of time may be available is CCMMUNICATION. Estensive of time may be available in CCMMUNICATION. If the period for reply specified above a less than thety (50) days, a reply within the station printinum of thirty, (30) days will be considered limbly. If the period for reply specified above, the measure statutory private will apply and will explice SIX (9) MONTHS from the mailing date of this communication to reply specified above, the measure stations private will apply and will explice SIX (9) MONTHS from the mailing date of this communication. Failwho to reply specified above, the measure stations private in the mailing date of this communication. Failwho to reply within the station of the communication of the communication. Failwho to reply within the station of the communication of the communication. Failwho to reply within the station of the communication of the communication. Failwho to reply within the station of the communication of the communication. Failwho to reply within the station of the communication of the communication. Failwho to reply within the station of the communication of the communication. Status I) Mesponsive to communication(s) filed on 14. July 2004. Failwho to reply apply the station of the communication. See 37 CFR 1.704(s). Disposition of Claims Claim (s) 1.4 and 9.19 is/are pending in the application. Application of Claims			09/771,595	HOSSEL ET AL.			
The MAILING DATE of this communication appears on the cover sheet with the correspondence addre Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the promise of 37 CFR 1.13(a). In no event, however, may a reply be timely filed after SIX (b) MCNITS from the mailing date of this communication. If NO period for reply is shallowed by the promise of 37 CFR 1.13(a). In no event, however, may a reply be timely filed after SIX (b) MCNITS from the mailing date of this communication. If NO period for reply is shallowed by the Office as the shallow for reply is a filed to the south of the period of the communication. If NO period for reply is shallowed by the Office as the shallowed the period of reply is a filed that the remaining date of this communication, even if timely filed, may reduce any example plaint form adjustment. See 37 CFR 1.704(a). Status 1) □ Responsive to communication(s) filed on 14 July 2004. 2a) □ This action is FINAL. 2b) □ This action is non-final. 3] □ Since this application is in condition for allowance except for formal matters, prosecution as to the microcommunication of Claims 4) □ Claim(s) □ Island 9-19 islare pending in the application. 4a) Of the above claim(s) □ islare withdrawn from consideration. 5] □ Claim(s) □ islare allowed. 6) □ Claim(s) □ islare allowed. 6) □ Claim(s) □ islare allowed. 7) □ Claim(s) □ islare rejected. 7) □ Claim(s) □ islare allowed. 8) □ Claim(s) □ islare allowed. 8) □ Claim(s) □ islare objected to by the Examiner. 10) □ The drawing(s) filed on □ islare: a) □ accepted or b) □ objected to by the Examiner. 11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-1. 12 □ Certified copies of the priority documents have been received. 2 □ Certified copies of the priority documents have been received in Application No. □ . □ . □ . □ . □ . □ . □ . □ . □ . □		Office Action Summary	Examiner	Art Unit			
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DETAILED ACTION

Acknowledgment is made of the response filed 7/14/2004. Claims pending are 1-4 and 9-19.

Claim Rejections - 35 USC § 103

- 1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
- 2. The rejection of Claims 1-4 and 9-19 under 35 U.S.C. 103(a) as being unpatentable over Dieing et al. (EP 0 893 117) in view of Tanner et al. (US 5,827,508) and George et al. (US 6,165,449) is maintained for the reasons of the record.

Response to Arguments

3. Applicant's arguments filed 7/14/04 have been fully considered but they are not persuasive.

The Applicant argues on pp. 2-3 of the reply:

To the extent that the resulting hair conditioning composition can reasonably be expected to exhibit the improved stability applicants agree with the Examiner. Applicants however disagree that the expectation to obtain a stabilized hair conditioning composition and/or the fact that sunscreen components are conventionally employed in hair care cosmetics are sufficient to motivate a person of ordinary skill in the art to combine Tanner et al.'s UV filter combination with the hair conditioning composition disclosed by Dieing et al.

In response to applicant's argument it is noted that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would

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otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Further, the Applicant argues on p. 3 of the reply:

It is deemed questionable at best whether a hair conditioning composition which contains Tanner et al.'s UV filter combination comprising zinc oxide will provide for a good UVA protection of the hair. In order to protect the hair from UVA radiation the zinc oxide powder would need to remain on the hair. It can, however, not reasonably be expected that an inorganic oxide such as the zinc oxide powder employed by Tanner el al. will remain on the hair. Rather, it would appear to be more than likely that the zinc oxide powder is shed from the hair with the result that the UVA protection which is sought is no longer provided. In addition to the loss of UVA protection due to the detachment of the zinc oxide from the hair, the inorganic oxide which is shed from the hair is likely to soil the clothing of a person using the requisite hair conditioning composition.

In response, it is noted that the Applicant has not provided any evidence that zinc oxide powder will not remain on the hair. On the contrary, one skilled in the art would have reasonably expected zinc oxide of Tanner et al. to remain on the hair because zinc oxide of Tanner et al. (1) is in the form of very small particles (0.1-100 microns) and (2) is surface treated with materials which improve its dispersability in the composition. Further, Tanner et al. explicitly teach that their compositions are physically stable, i.e. resist phase separation. See col. 3. lines 49-57.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL G. HARTLEY PRIMARY EXAMINER

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